

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICROSOFT CORPORATION, a
Washington corporation,

Plaintiff,

v.

JOHN DOES 1–10 using IP address
69.92.99.109,

Defendants.

No.

COMPLAINT FOR DAMAGES
AND EQUITABLE RELIEF

Plaintiff Microsoft Corporation (“Microsoft”) files this Complaint against Defendants John Does 1–10 using IP address 69.92.99.109 (“Defendants”), alleging as follows:

I. INTRODUCTION

1. This is an action for copyright and trademark infringement of certain copyrights and trademarks associated with Microsoft software. This action arises from the unauthorized copying of Microsoft’s copyrighted software and the trademarks displayed in such software.

II. PARTIES

2. Microsoft is a Washington corporation with its principal place of business in Redmond, Washington. Microsoft develops, markets, distributes, and licenses computer software, among other products and services.

3. The true identities of Defendants are not presently known to Microsoft. On information and belief, Defendants are in possession or control of the Internet Protocol (“IP”)

1 address 69.92.99.109, which was used by one or more Defendants in furtherance of the unlawful
2 conduct alleged herein.

3 III. JURISDICTION & VENUE

4 4. The Court has subject matter jurisdiction over Microsoft's claims for copyright
5 and trademark infringement pursuant to 15 U.S.C. § 1121, 17 U.S.C. § 501, and 28 U.S.C.
6 §§ 1331 and 1338(a).

7 5. The Court has personal jurisdiction over Defendants because they purposefully
8 directed their unlawful activities at Washington, and Microsoft's claims arise from those
9 activities. Defendants activated and attempted to activate at least several thousand copies of
10 Microsoft software, much of which was pirated and unlicensed. During the software activation
11 process, Defendants contacted Microsoft activation servers in Washington thousands of times
12 from 2013 to 2016, and transmitted detailed information to those servers in order to activate the
13 software. Defendants' contact with Microsoft's activation servers was voluntary, intentional
14 and comprised a routine part of Defendants' installation of software. In addition, Defendants
15 expressly aimed their conduct at Washington because they (1) had actual or constructive
16 knowledge of Microsoft's intellectual property rights (including Microsoft's registered
17 copyrights and trademarks) and Microsoft's residence in Washington where it controls its
18 exclusive rights in its trademarks and copyrights; (2) acted, at a minimum, with willful blindness
19 to, or in reckless disregard of, Microsoft's rights, and in reckless disregard of the likelihood that
20 it was infringing Microsoft's copyrights; and (3) knew or should have known that their conduct
21 would cause harm to Microsoft in Washington, because it is foreseeable that infringement of
22 Microsoft's rights would cause harm likely to be suffered in Washington, the state of its
23 residence, incorporation, and headquarters. *See Wash. Shoe Co. v. A-Z Sporting Goods, Inc.*,
24 704 F.3d 668 (9th Cir. 2012).

25 6. Venue is proper in this Court pursuant to 28 U.S.C. § 1400(a) because
26 Defendants are subject to personal jurisdiction in the Western District of Washington. *See*
27 *Brayton Purcell LLP v. Recordon & Recordon*, 606 F.3d 1124 (9th Cir. 2010). Venue is also

proper in this district pursuant to 28 U.S.C. 1391(b) because a substantial part of the events giving rise to the claims occurred in the Western District of Washington.

7. Pursuant to Local Civil Rule 3(d), intra-district assignment to the Seattle Division is proper because the claims arose in this Division, where (a) Microsoft resides, (b) the injuries giving rise to suit occurred, and (c) Defendants directed their unlawful conduct.

IV. FACTS COMMON TO ALL CLAIMS

A. The Global Problem of Software Piracy

8. Software developers lose billions of dollars in annual revenue from software piracy, namely, the unauthorized and unlawful copying, downloading, and distributing of copyrighted and trademarked software and related components. In 2013, the commercial value of pirated software in the United States was in excess of \$9.7 billion. *See* Business Software Alliance, *The Compliance Gap: Global Software Survey* (June 2014), http://globalstudy.bsa.org/2013/downloads/studies/2013GlobalSurvey_Study_en.pdf.

9. One prominent form of software piracy is known as “hard-disk loading,” the unauthorized commercial copying and installation of infringing software on devices which are often sold in competition with, and often for lower prices than, devices pre-installed with legally licensed copies of software.

10. Software developers, like Microsoft, are not the only victims of software piracy. Consumers are also victims, as they are often deceived by distributors of pirated software who go to great lengths to make the software appear genuine. These customers may unwittingly expose themselves to security risks associated with the use of pirated software. *See* Federal Bureau of Investigation, *Consumer Alert: Pirated Software May Contain Malware*, Aug. 1, 2013, at <http://www.fbi.gov/news/stories/2013/august/pirated-software-may-contain-malware/> (noting the relatively greater risk that pirated software is infected with malicious software, or “malware,” which can be used to record keystrokes and thus capture sensitive information such as user names, passwords, and Social Security numbers).

B. Microsoft's Software and Intellectual Property

11. Microsoft develops, advertises, markets, distributes, and licenses a number of computer software programs. Microsoft's software programs are recorded on distributable media, such as DVDs, or are made available for download through various authorized distribution channels.

12. **Windows 10:** Microsoft has developed, advertises, markets, distributes, and licenses a computer operating system called Microsoft Windows 10 ("Windows 10"). Windows 10 is available in a number of different versions, each of which includes certain combinations of products, programs, and features. Versions of Windows 10 include Windows 10 and Windows 10 Professional. Microsoft holds a valid copyright in Windows 10 Professional, the most expansive version of Windows 10. As a result, Microsoft's copyright in Windows 10 Professional encompasses all other versions of Windows 10. Microsoft's copyright in Windows 10 Professional was duly and properly registered with the United States Copyright Office. A true and correct copy of the Registration Certificate for Microsoft Windows 10 Professional, bearing the number TX 8-058-526, is attached as Exhibit 1.

13. **Windows 8.1:** Microsoft has developed, advertises, markets, distributes, and licenses a computer operating system called Microsoft Windows 8.1 ("Windows 8.1"). Windows 8.1 is available in a number of different versions, each of which includes certain combinations of products, programs, and features. Versions of Windows 8.1 include Windows 8 and Windows 8.1 Professional. Microsoft holds a valid copyright in Windows 8.1 Professional, the most expansive version of Windows 8.1. As a result, Microsoft's copyright in Windows 8.1 Professional encompasses all other versions of Windows 8.1. Microsoft's copyright in Windows 8.1 Professional was duly and properly registered with the United States Copyright Office. A true and correct copy of the Registration Certificate for Microsoft Windows 8 Professional, bearing the number TX 7-740-672, is attached as Exhibit 2.

14. **Windows 8:** Microsoft has developed, advertises, markets, distributes, and licenses a computer operating system called Microsoft Windows 8 ("Windows 8"). Windows 8

1 is available in a number of different versions, each of which includes certain combinations of
2 products, programs, and features. Versions of Windows 8 include Windows 8 and Windows 8
3 Professional. Microsoft holds a valid copyright in Windows 8 Professional, the most expansive
4 version of Windows 8. As a result, Microsoft's copyright in Windows 8 Professional
5 encompasses all other versions of Windows 8. Microsoft's copyright in Windows 8 Professional
6 was duly and properly registered with the United States Copyright Office. A true and correct
7 copy of the Registration Certificate for Microsoft Windows 8 Professional, bearing the number
8 TX 7-601-008, is attached as Exhibit 3.

9 15. **Windows Vista:** Microsoft has developed, advertises, markets, distributes, and
10 licenses a computer operating system called Microsoft Windows Vista ("Windows Vista").
11 Windows Vista is available in a number of different versions, each of which includes certain
12 combinations of products, programs, and features. Versions of Windows Vista include
13 Windows Vista Ultimate, Windows Vista Home Premium, and Windows Vista Home Basic.
14 Microsoft holds a valid copyright in Windows Vista Ultimate, the most expansive version of
15 Windows Vista. As a result, Microsoft's copyright in Windows Vista Ultimate encompasses all
16 other versions of Windows Vista. Microsoft's copyright in Windows Vista Ultimate was duly
17 and properly registered with the United States Copyright Office. A true and correct copy of the
18 Registration Certificate for Windows Vista Ultimate, bearing the number TX 6-508-905, is
19 attached as Exhibit 4.

20 16. **Windows 7:** Microsoft has developed, advertises, markets, distributes, and
21 licenses a computer operating system called Microsoft Windows 7 ("Windows 7"). Windows 7
22 is available in a number of different versions including Windows 7 Ultimate, Windows 7
23 Professional, Windows 7 Home Premium, and Windows 7 Enterprise. Microsoft holds a valid
24 copyright in Windows 7 Ultimate, the most expansive version of Windows 7. As a result,
25 Microsoft's copyright in Windows 7 Ultimate encompasses all other versions of Windows 7.
26 Microsoft's copyright in Windows 7 Ultimate was duly and properly registered with the United
27

1 States Copyright Office. A true and correct copy of the Registration Certificate for Microsoft
2 Windows 7 Ultimate, bearing the number TX 7-009-361, is attached as Exhibit 5.

3 17. **Office 2013:** Microsoft has developed, advertises, markets, distributes, and
4 licenses a computer operating system called Microsoft Office 2013 (“Office 2013”). Office 2013
5 is available in a number of different versions, each of which includes certain combinations of
6 products, programs, and features. Versions of Office 2013 include Office 2013 Professional,
7 Office 2013 Home and Business, and Office 2013 Home and Student. Microsoft holds a valid
8 copyright in Office 2013 Professional Plus, the most expansive version of Office 2013. As a
9 result, Microsoft’s copyright in Office 2013 Professional encompasses all other versions of
10 Office 2013. Microsoft’s copyright in Office 2010 Professional was duly and properly registered
11 with the United States Copyright Office. A true and correct copy of the Registration Certificate
12 for Office 2013 Professional, bearing the number TX 7-649-882, is attached as Exhibit 6.

13 18. **Office 2010:** Microsoft has developed, advertises, markets, distributes, and
14 licenses a computer operating system called Microsoft Office 2010 (“Office 2010”). Office 2010
15 is available in a number of different versions, each of which includes certain combinations of
16 products, programs, and features. Versions of Office 2010 include Office 2010 Professional,
17 Office 2010 Professional Plus, Office 2010 Home and Business, and Office 2010 Home and
18 Student. Microsoft holds a valid copyright in Office 2010 Professional Plus, the most expansive
19 version of Office 2010. As a result, Microsoft’s copyright in Office 2010 Professional Plus
20 encompasses all other versions of Office 2010. Microsoft’s copyright in Office 2010
21 Professional Plus was duly and properly registered with the United States Copyright Office. A
22 true and correct copy of the Registration Certificate for Office 2010 Professional Plus, bearing
23 the number TX 7-151-840, is attached as Exhibit 7.

24 19. **Windows Server 2008:** Microsoft has developed, advertises, markets,
25 distributes, and licenses a line of server operating system called Windows Server 2008.
26 Windows Server 2008 is available in a number of different versions, each of which includes
27 certain combinations of products, programs, and features. Versions of Windows Server 2008

1 include Windows Server Standard 2008 R2, Windows Server Standard 2008, Windows Web
2 Server 2008 R2, and Windows Web Server 2008. Microsoft holds a valid copyright in Windows
3 Server, which encompasses all versions of Windows Server. Microsoft's copyright in Windows
4 Server was duly and properly registered with the United States Copyright Office. A true and
5 correct copy of the Registration Certificate for Windows Server, bearing the number TX 6-88-
6 740, is attached as Exhibit 8.

7 20. Microsoft has also duly and properly registered a number of trademarks and
8 service marks in the United States Patent and Trademark Office on the Principal Register,
9 including without limitation:

10 (a) "MICROSOFT," Trademark and Service Mark Registration No. 1,200,236, for
11 computer programs and computer programming services;

12 (b) "WINDOWS," Trademark Registration No. 1,872,264 for computer programs
13 and manuals sold as a unit;

14 (c) "FLAG DESIGN TWO (B/W)," Trademark Registration No. 2,738,877, for
15 computer software;

16 (d) "FLAG DESIGN TWO (COLOR)," Trademark Registration No. 2,744,843, for
17 computer software;

18 (e) "MICROSOFT OFFICE," Trademark Registration No. 3,625,391, for computer
19 productivity software;

20 (f) "OFFICE 2010 DESIGN," Trademark Registration No. 4,029,299, for computer
21 productivity software;

22 (g) "OFFICE 2012 DESIGN," Trademark Registration No. 4,459,826, for computer
23 productivity software;

24 (h) "ACCESS," Trademark Registration No. 3,238,869, for computer database
25 management software;

26 (i) "ACCESS LAUNCH ICON (2010)," Trademark Registration No. 3,905,556, for
27 computer database management software;

- 1 (j) "ACCESS LAUNCH ICON (2012)," Trademark Registration No. 4,356,955 for
2 computer database management software;
- 3 (k) "CAMERA TILE," Trademark Registration No. 4,415,986 for computer software
4 for accessing and managing camera functions;
- 5 (l) "CHARM BAR," Trademark Registration No. 4,489,348 for computer software
6 operating system;
- 7 (m) "EXCEL," Trademark Registration No. 2,942,050, for computer spreadsheet
8 software;
- 9 (n) "EXCEL LAUNCH ICON 2010," Trademark Registration No. 3,905,558 for
10 computer spreadsheet software;
- 11 (o) "EXCEL LAUNCH ICON 2012," Trademark Registration No. 4,355,451 for
12 computer spreadsheet software;
- 13 (p) "GAMES TILE," Trademark Registration No. 4,444,995 for computer software
14 enabling access to online games;
- 15 (q) "MAPS TILE," Trademark Registration No. 4,415,985 for computer software for
16 mapping and directions;
- 17 (r) "MESSAGING TILE," Trademark Registration No. 4,426,631 for computer
18 software for text and multimedia messaging;
- 19 (s) "MUSIC TILE," Trademark Registration No. 4,426,630 for computer software
20 for downloading and listening to music and other audio content;
- 21 (t) "ONENOTE," Trademark Registration No. 2,844,710, for computer software for
22 use in note taking;
- 23 (u) "ONENOTE LAUNCH ICON 2010," Trademark Registration No 3,905,559 for
24 computer software for use in note taking;
- 25 (v) "ONENOTE LAUNCH ICON 2012," Trademark Registration No 4,351,584 for
26 computer software for use in note taking;
- 27

1 (w) "OUTLOOK," Trademark Registration No. 2,188,125, for computer programs
2 for providing enhanced electronic mail and scheduling capabilities;

3 (x) "OUTLOOK LAUNCH ICON 2010," Trademark Registration No. 3,905,560, for
4 computer programs for providing enhanced electronic mail and scheduling capabilities;

5 (y) "OUTLOOK LAUNCH ICON 2012," Trademark Registration No. 4,355,446, for
6 computer programs for providing enhanced electronic mail and scheduling capabilities;

7 (z) "POWERPOINT," Trademark Registration No. 1,475,795, for computer software
8 programs for creating presentations, graphics and videos;

9 (aa) "POWERPOINT LAUNCH ICON 2010," Trademark Registration No.
10 3,905,561, for computer software programs for creating presentations, graphics and
11 videos;

12 (bb) "POWERPOINT LAUNCH ICON 2012," Trademark Registration No.
13 4,385,388, for computer software programs for creating presentations, graphics and
14 videos;

15 (cc) "PUBLISHER LAUNCH ICON 2010," Trademark Registration No. 3,909,142
16 for desktop publishing software;

17 (dd) "PUBLISHER LAUNCH ICON 2012," Trademark Registration No. 4,355,448
18 for desktop publishing software;

19 (ee) "SPORTS TILE," Trademark Registration No. 4,426,632 for computer software
20 for viewing information and content about sports;

21 (ff) "VIDEO TILE," Trademark Registration No. 4,412,218 for computer software
22 for downloading and viewing video content;

23 (gg) "WINDOWS 8 PACKAGING," Trademark Registration No. 4,476,005, for
24 computer operating system software;

25 (hh) "WINDOWS SERVER," Trademark Registration No. 3,056,149, for operating
26 system, computer and utility programs;

(ii) “WINDOWS STORE TILE,” Trademark Registration No. 4,552,497, for operating system software;

(jj) “WINDOWS VISTA,” Trademark Registration No. 3,424,198, for providing online information concerning computer operating system programs, and providing online technical support in the field of computer operating systems;

(kk) “WINDOWS VISTA,” Trademark Registration No. 3,235,107, for operating system programs;

(ll) “WORD LAUNCH ICON 2010,” Trademark Registration No. 3,909,143, for word processing software; and

(mm) “WORD LAUNCH ICON 2012,” Trademark Registration No. 4,355,444 for word processing software.

True and correct copies of the Trademark Registrations for (a) through (mm) above are attached as Exhibits 9 through 47, respectively.

C. Microsoft’s Distribution Channels for Software

21. Microsoft distributes its software through a number of distribution channels, including the Original Equipment Manufacturer (OEM), volume licensing, subscriptions, and refurbisher channels.

22. The Original Equipment Manufacturer (“OEM”) distribution channel is one through which Microsoft software is distributed to computer and device manufacturers called OEMs. OEMs customarily pre-install software on the devices they build including, most commonly, the Microsoft Windows operating system.

23. The OEM distribution channel involves sub-channels that supply Microsoft software to different categories of OEMs. Two of these sub-channels are the Commercial OEM channel and the Direct OEM channel.

24. Through the Commercial OEM (“COEM”) channel, Microsoft authorized distributors supply what is called “system builder” software to small and medium-sized OEMs for pre-installation on devices.

1 25. Through the Direct OEM (“DOEM”) channel, Microsoft directly provides
2 software to large computer manufacturers, such as Dell and Lenovo, for pre-installation on
3 devices. The DOEMs acquire some components associated with the Microsoft software from
4 Microsoft Authorized Replicators (“ARs”).

5 26. In addition to the OEM channel, Microsoft offers a number of subscription
6 programs through which it provides software to qualified subscribers. One example of a
7 subscription program is the Microsoft Developer Network (“MSDN”), which is for individuals
8 and entities that develop third-party software compatible with Microsoft software. MSDN
9 subscribers are able to download certain Microsoft software directly from Microsoft.

10 27. Microsoft also offers Volume Licensing (“VL”) programs for its business
11 customers. Through the VL program, customers purchase licenses for their software and can
12 add, remove, and upgrade their software as their business needs evolve.

13 **D. Product Activation**

14 28. Like many other software developers, Microsoft has implemented a wide-range
15 of initiatives to protect its customers and combat theft and infringement of its intellectual
16 property. One important tool in Microsoft’s anti-piracy protection arsenal is its product
17 activation system, which involves the activation of software through product keys.

18 29. A Microsoft product key is a 25-character alphanumeric string generated by
19 Microsoft and provided to customers and OEMs. Generally, when customers or OEMs install
20 Microsoft software on a device, they must enter a product key. Then, as part of the activation
21 process, customers and, in some cases, OEMs voluntarily contact Microsoft’s activation servers
22 over the Internet and transmit their product keys and other technical information about their
23 device to the activation servers. The majority of the activations involved in this matter
24 contacted servers that are physically located in Washington.

25 30. The activation process is analogous to the activation of credit cards or mobile
26 phones with a code provided by the financial institution or the mobile carrier. Because
27 Microsoft’s copyrighted software is capable of being installed on an unlimited number of

1 computers, Microsoft relies on the product activation process to detect piracy and protect
2 consumers from the risks of non-genuine software.

3 31. In the OEM channel, each copy of genuine Microsoft Windows 10, Windows 8.1,
4 Windows 8, Windows Vista, Windows 7, Office 2013, Office 2010, and Windows Server 2008
5 software is distributed with a product key unique to that copy of the software—thus, for
6 example, if a customer purchases ten copies of Windows 7, the customer is supplied with ten
7 unique product keys. For Microsoft’s subscription and VL programs, customers are normally
8 supplied a single product key for each version of Microsoft software they license. For example,
9 subscription and volume licensing customers receive one reusable product key for all Office
10 2010 Professional licenses authorized under their agreements to install and activate all copies.

11 32. Product activation works differently in the COEM and DOEM channels. COEMs
12 use individual product keys to install and, in some cases, activate the software on the devices.
13 DOEMs, on the other hand, either use a master key or a separate file generated from Microsoft
14 to install Windows software on each device.

15 **E. Microsoft’s Use of Cyberforensics to Combat Piracy**

16 33. In order to combat the global threat of software piracy of its software, Microsoft
17 relies on investigative methods that leverage state-of-the-art technology to detect software
18 piracy. Microsoft refers to these methods as “cyberforensics.”

19 34. As part of its cyberforensic methods, Microsoft analyzes activation data
20 voluntarily provided by users when they activate Microsoft software, including the IP address
21 from which a given product is activated. An IP address is a numerical identifier used to
22 uniquely identify an internet-capable device when the device is connected to the Internet. An IP
23 address is ordinarily assigned to an internet user (whether an individual or an entity) by the
24 user’s Internet Service Provider (“ISP”).

25 35. Entities charged with managing and administering internet numbering resources,
26 including IP addresses, publish information about IP address assignment and registration in
27 publicly-searchable databases. Akin to an IP address “phone book,” these databases can be used

1 to associate each IP address with the individual or entity assigned to use that address. In some
2 cases, the listed individual or entity is actually using the IP address; in other cases, the listed
3 individual or entity is an ISP who has assigned the IP address to one of its customers. Thus, in
4 some instances, the identity of the individual or entity associated with a particular IP address is
5 publicly available; in other instances, the identity of the individual or entity can only be obtained
6 from the ISP assigned to that IP address.

7 36. Cyberforensics allows Microsoft to analyze billions of activations of Microsoft
8 software and identify activation patterns and characteristics that make it more likely than not
9 that the IP address associated with the activations is an address through which pirated software
10 is being activated.

11 **F. Defendants' Infringing Conduct**

12 37. Microsoft's cyberforensics have identified over one thousand activations of
13 Microsoft software originating from IP address 69.92.99.109 ("the IP Address"), which is
14 presently assigned to Cable One, Inc., and which, on information and belief, is being used by the
15 Defendants in furtherance of the unlawful conduct alleged herein. A material percentage of
16 these activations have characteristics that, on information and belief, demonstrate that
17 Defendants are using the IP Address to activate pirated software.

18 38. On information and belief, Defendants have activated and attempted to active
19 copies of Microsoft Windows 10, Windows 8.1, Windows 8, Windows Vista, Windows 7,
20 Office 2013, Office 2010, and Windows Server 2008 with product keys that have the following
21 characteristics:

- 22 a. Product keys known to have been stolen from Microsoft's supply chain;
- 23 b. Product keys used more times than is authorized by the applicable software
24 license;
- 25 c. Subscription program product keys used by non-qualified individuals or
26 entities, or by individuals or entities other than the subscriber;
- 27

- d. Subscription program keys used in a manner that is not authorized by the applicable license (such as product keys intended for educational institutions used by commercial entities); or
- e. Product keys used to activate software outside of the region for which it was intended.

39. On information and belief, each of these activations and attempted activations constitutes the unauthorized copying of Microsoft software, in violation of Microsoft's software licenses and its intellectual property rights.

40. On information and belief, Defendants have been and continue to be involved in installing counterfeit and infringing copies of Microsoft's software and/or related components.

41. On information and belief, Defendants have committed and continue to commit acts of copyright and trademark infringement against Microsoft. On information and belief, at a minimum, Defendants acted with willful blindness to, or in reckless disregard of, Microsoft's registered copyrights, trademarks, and service mark.

V. CAUSES OF ACTION

First Claim

Copyright Infringement - 17 U.S.C. § 501 *et seq.*

Microsoft is the sole owner of Microsoft Windows 10, Windows 8.1, Windows 8, Windows Vista, Windows 7, Office 2013, Office 2010, and Windows Server 2008, and of the corresponding copyrights and Certificates of Registration with the registration numbers listed above.

42. Defendants have infringed Microsoft's copyrights by reproducing Microsoft software in the United States of America without approval or authorization from Microsoft.

43. At a minimum, Defendants acted with willful blindness to, or in reckless disregard of, Microsoft's registered copyrights.

44. As a result of Defendants' wrongful conduct, Microsoft is entitled to recover its actual damages and Defendants' profits attributable to the infringement. Alternatively, Microsoft is entitled to statutory damages under 17 U.S.C. § 504(c).

45. The award of statutory damages should be enhanced in accordance with 17 U.S.C. § 504(c)(2).

46. Microsoft is further entitled to injunctive relief and an order impounding all infringing materials. Microsoft has no adequate remedy at law for Defendants' wrongful conduct because, among other things: (a) Microsoft's copyrights are unique and valuable property which have no readily determinable market value; (b) Defendants' infringement harms Microsoft such that Microsoft could not be made whole by any monetary award; and (c) Defendants' wrongful conduct, and the resulting damage to Microsoft, is continuing.

Second Claim
Trademark Infringement – 15 U.S.C. § 1114

47. Defendants' activities constitute infringement of Microsoft's federally registered trademarks and service mark with the registration numbers listed above.

48. Microsoft advertises, markets, distributes, and licenses its software and related components under the trademarks and service mark described above and uses these trademarks and service mark to distinguish Microsoft's products from the software and related items of others in the same or related fields.

49. Because of Microsoft's long, continuous, and exclusive use of these trademarks and service mark, they have come to mean, and are understood by customers, end users, and the public to signify, software programs and related components or services of Microsoft.

50. The infringing materials that Defendants have and are continuing to install are likely to cause confusion, mistake, or deception as to their source, origin, or authenticity.

51. Further, Defendants' activities are likely to lead the public to conclude, incorrectly, that the infringing materials that Defendants are installing originate with or are authorized by Microsoft, thereby harming Microsoft, its licensees, and the public.

52. At a minimum, Defendants acted with willful blindness to, or in reckless disregard of, Microsoft's registered marks.

53. As a result of Defendants' wrongful conduct, Microsoft is entitled to recover its actual damages, Defendants' profits attributable to the infringement, and treble damages and attorney fees pursuant to 15 U.S.C. § 1117 (a) and (b). Alternatively, Microsoft is entitled to statutory damages under 15 U.S.C. § 1117(c).

54. Microsoft is further entitled to injunctive relief and an order compelling the impounding of all infringing materials. Microsoft has no adequate remedy at law for Defendants' wrongful conduct because, among other things: (a) Microsoft's trademarks and service mark are unique and valuable property that have no readily determinable market value; (b) Defendants' infringement constitutes harm to Microsoft's reputation and goodwill such that Microsoft could not be made whole by any monetary award; (c) if Defendants' wrongful conduct is allowed to continue, the public is likely to become further confused, mistaken, or deceived as to the source, origin or authenticity of the infringing materials; and (d) Defendants' wrongful conduct, and the resulting harm to Microsoft, is continuing.

VI. PRAYER FOR RELIEF

WHEREFORE, Microsoft respectfully prays for the following relief:

A. That the Court enter judgment in Microsoft's favor on all claims;

B. That the Court restrain and enjoin Defendants, their directors, principals, officers, agents, representatives, employees, attorneys, successors and assigns, and all others in active concert or participation with it, from:

(i) copying or making any other infringing use or infringing distribution of Microsoft's software and other intellectual property including but not limited to the software identified by the Trademark, Service Mark, and Copyright Registration Numbers listed above;

(ii) manufacturing, assembling, producing, distributing, offering for distribution, circulating, selling, offering for sale, advertising, importing, promoting, or displaying any Microsoft software or other intellectual property bearing any simulation,

1 reproduction, counterfeit, copy, or colorable imitation of any of Microsoft's registered
 2 trademarks, service mark, or copyrights, including, but not limited to, the Trademark, Service
 3 Mark, and Copyright Registration Numbers listed above;

4 (iii) using any simulation, reproduction, counterfeit, copy, or colorable
 5 imitation of Microsoft's registered trademarks, service mark, or copyright including, but not
 6 limited to the Trademark, Service Mark, and Copyright Registration Numbers listed above, in
 7 connection with the manufacture, assembly, production, distribution, offering for distribution,
 8 circulation, sale, offering for sale, import, advertisement, promotion, or display of any software,
 9 component, and/or other item not authorized or licensed by Microsoft;

10 (iv) engaging in any other activity constituting an infringement of any of
 11 Microsoft's trademarks, service mark and/or copyrights, or of Microsoft's rights in, or right to
 12 use or to exploit, these trademarks, service mark, and/or copyrights; and

13 (v) assisting, aiding, or abetting any other person or business entity in
 14 engaging in or performing any of the activities listed above;

15 C. That the Court enter an order pursuant to 15 U.S.C. § 1116 and 17 U.S.C. § 503
 16 impounding all counterfeit and infringing copies of purported Microsoft software and/or
 17 materials bearing any of Microsoft's trademarks or service mark, and any related item, including
 18 business records, that are in Defendants' possession or under their control;

19 D. That the Court enter an order declaring that Defendants hold in trust, as
 20 constructive trustees for the benefit of Microsoft, the illegal profits obtained from their
 21 distribution of counterfeit and infringing copies of Microsoft's software, and requiring
 22 Defendants to provide Microsoft a full and complete accounting of all amounts due and owing
 23 to Microsoft as a result of Defendants' unlawful activities;

24 E. That Defendants be required to pay all general, special, actual, and statutory
 25 damages which Microsoft has sustained, or will sustain, as a consequence of Defendants'
 26 unlawful acts, and that such damages be enhanced, doubled, or trebled as provided for by 17
 27 U.S.C. § 504(c) and 15 U.S.C. § 1117(b);

1 F. That Defendants be required to pay to Microsoft both the costs of this action and
2 the reasonable attorneys' fees incurred by Microsoft in prosecuting this action, as provided for
3 by 15 U.S.C. § 1117 and 17 U.S.C. § 505; and

4 G. That the Court grant Microsoft such other, further, and additional relief as the
5 Court deems just and equitable.

6 DATED this 14th day of July, 2016.

7 DAVIS WRIGHT TREMAINE LLP
8 *Attorneys for Plaintiff Microsoft Corp.*

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